

leaving the Anderson County Republican Party Headquarters, her opponent, incumbent Ken Waters, entered the offices to file his SIC. Importantly, Mr. Waters was considered “exempt” from S.C. Code Ann. § 8-13-1356 (Supp. 2011), as interpreted by the South Carolina Supreme Court in *Anderson v. S.C. Election Comm’n*, Op. No. 27120 (S.C. Sup. Ct. filed May 2, 2012) and was not required to simultaneously file an SEI at the filing of his SIC as was Plaintiff Smith. After the South Carolina Supreme Court’s decision in the case of *Anderson v. S.C. Election Comm’n*, Op. No. 27120 (S.C. Sup. Ct. filed May 2, 2012), Plaintiff Smith was recertified by the Anderson County Republican Party as eligible to remain on the ballot because she was deemed to have met the standard of “S.C. Code Ann. § 8-13-1356, which provides that ‘[a] candidate must file a statement of economic interests for the preceding calendar year at the same time and with the same official with whom the candidate files a declaration of candidacy or petition for nomination’.” However, after the South Carolina Supreme Court’s subsequent decision in the case of *Florence County Democratic Party et al. v. Florence County Republican Party et. al*, (S.C. Sup. Ct. filed June 5, 2012), and as a result of a rehearing request in the case of *Anderson v. S.C. Election Comm’n*, Op. No. 27120 (S.C. Sup. Ct. filed May 2, 2012), the South Carolina Supreme Court determined that the only method for non-exempt individuals to comply with the Court’s interpretation of S.C. Code Ann. § 8-13-1356 was to have filed a **paper** copy of an SEI. This requirement is found nowhere in the text of the statute, but, rather, was the result of the common law interpretation by the South Carolina Supreme Court. Accordingly, on June 7, 2012, Plaintiff Smith was decertified and removed from the ballot.

2. Plaintiff Tommie Reece (hereinafter referred to as Plaintiff Reece) is a citizen and resident of Greenville County and was a candidate for State Senate District Six (6), which covers the Northwestern portion of Greenville County. Plaintiff Reece currently sits on the School Board for Greenville County and had a 2011 SEI already on file pursuant to S.C. Code Ann. §8-13-1110(B)(8). Plaintiff Reece filed for candidacy for State Senate District 6 with the Greenville County Republican Party on March 29, 2012. Because she was already a “public official” pursuant to S.C. Code Ann. §8-13-1110(B)(8), with a current SEI on file, the Greenville County Republican Party initially declared Reece to be exempt from the additional SEI filing requirements. The Chair requested Plaintiff Reece’s 2011 SEI and Plaintiff Reece provided the copy of her 2011 SEI already on file. (See **Exhibit C**). Thereafter, upon further request, Plaintiff Reece filed a 2012 SEI form on March 30 and provided a copy of it as well to the Greenville County Republican Party. (See **Exhibit D**). Plaintiff Reece was initially certified and then re-certified after the *Anderson* case because she was deemed by her party to be “exempt” as a “public official” from S.C. Code Ann. §8-13-1356 pursuant to S.C. Code Ann. §8-13-1110(B)(8). However, after the case of *Florence County Democratic Party et al. v. Florence County Republican Party et. al*, Slip Opinion No. 27128, June 5, 2012 (S.C. Sup. Ct), and as a result of a rehearing request in the case of *Anderson et al. v. South Carolina Election Commission et al.*, Slip Opinion number 27120, filed May 2, 2012 (S.C. Sup. Ct), the South Carolina Supreme Court’s ruling was thereafter interpreted by the Greenville County Republican Party to mean that one not only have *an* SEI on file, but that the SEI on file be for the same seat one is currently seeking. (*i.e.* the candidate must be *the current incumbent* of that seat). Since Plaintiff Reece’s SEI on file was for

the office which she currently holds (i.e. Greenville County School Board Member) rather than the office she seeks (i.e. State Senate District Six (6)), she was decertified as a candidate and removed from the ballots of Greenville County. Plaintiff Reece was notified of the decertification decision at 4:45 p.m. on Thursday, June 7, 2012. Reece's opponent, incumbent State Senator Mike Fair, remains on the ballot. Conversely, Democratic candidates in an exactly similar race for State Senate District Seven's (7) seat in Southern Greenville County (Karl Allen, Lillian Brock-Flemming and Leola Robinson-Simpson) have all been deemed "exempt" from the simultaneous filing requirement by their local Democratic party because they are all currently sitting public officials, though none are the incumbent of State Senate District 7. (Sen. Ralph Anderson is not seeking re-election and it is an "open seat.") As of this filing, all of the State Senate District Seven (7) Democratic contenders remain on the ballot in Greenville County.

3. Plaintiff John Pettigrew (hereinafter referred to as "Plaintiff Pettigrew") is a citizen and resident of Edgefield County. Plaintiff Pettigrew was a candidate for the Republican nomination for the newly drawn State Senate District Twenty-Five (25) seat which now includes all of Edgefield County and portions of Aiken, Lexington, McCormick and Saluda Counties. Pettigrew is a former Mayor of Edgefield and served in the SC House of Representatives, as well as serving as county administrator and on the staff of Senator Strom Thurmond. Plaintiff Pettigrew filed his SIC with the Edgefield County Republican Party Chairman on or around 10:30 a.m. on March 30, 2012. **(Exhibit E)** Plaintiff Pettigrew had previously completed SEIs in his previous government roles and was advised that he need only file the SEI within 10 days of

receiving or expending \$500.00. On April 6, 2012, Plaintiff Pettigrew filed his SEI.

(Exhibit F). After the *Anderson* ruling, Pettigrew's name was removed from the ballot.

4. Plaintiff Bob Shirley (hereinafter "Plaintiff Shirley") was a Democratic contender for South Carolina House of Representatives District Eleven (11). The incumbent, Paul Agnew, is not seeking re-election and that seat is an "open seat" as well. Plaintiff Shirley previously served in the House of Representatives in the early 1990s. Plaintiff Shirley's Democratic opponent, Lee Garrett, is the current mayor of Calhoun Falls. While Plaintiff Reece has been decertified because her SEI was not for the *exact* office she is now seeking, Plaintiff Shirley's opponent, has been deemed "exempt" from the SEI filing requirement because he is currently a "public official," even though his SEI on file was for his mayoral position and *not* for the position of South Carolina House of Representatives District Eleven (11). After making several attempts to complete the SIC online, Plaintiff Shirley received a letter from the House Legislative Ethics Committee advising that he was late in filing his report. Plaintiff Shirley personally went to the Ethics Commission on April 30, 2012 and they assisted him in filing his SEI report.

(Exhibit G). Plaintiff Shirley was then assured that his candidacy would be fine and that he would be placed on the ballot. After the ruling in the *Anderson* case, Plaintiff Shirley was decertified and removed from the ballot. As of this filing, Garrett remains on the ballot.

5. Plaintiff Robert Tinsley (hereinafter referred to as "Plaintiff Tinsley"), is a citizen and resident of Greenwood County and was a Democratic candidate for the position of Eight Circuit Solicitor. The Eighth Circuit spans the South Carolina counties of Abbeville, Greenwood, Laurens and Newberry. Plaintiff Tinsley personally completed

his SEI, SIC and pledge at the State Democratic Party Headquarters in Columbia, South Carolina on March 30, 2012 at 11:45 a.m. (**Exhibit H**). The first item completed by Tinsley was the SEI, though the person who assisted Plaintiff Tinsley did not provide him with a copy. That representative of the State Democratic Party did, however, assure him it was printed to his file and was sent to the S.C. Ethics Commission and Election Commission. Also, the Democratic Party computer supposedly verified adequate filing. (**Exhibit I**). The Ethics Commission later asserted the SEI was not received until 12:23 p.m. on March 30, 2012. Despite this, the Election Commission stated to a reporter (on tape) that they “can not tell when Tinsley’s was received.” After the decision in *Anderson* case, Tinsley was de-certified and his name removed from the ballot.

7. The State of South Carolina (hereinafter referred to as Defendant State) is the body politic of the residents of the State of South Carolina and is represented through the executive, legislative and judicial branches within the State of South Carolina. The legislative, executive and judicial branches within the State of South Carolina are responsible for promulgating statutory laws, including election laws, and the judiciary and executive branches are responsible for enforcing and interpreting said laws. Specifically, in the last month, the judicial branch of the Defendant State of South Carolina has reinterpreted the 1992 act, as amended in 1996. Such interpretation has changed “votes” and “voting” as defined by the Voting Rights Act of 1965, as amended.

8. The State of South Carolina Election Commission is a subdivision of the State of South Carolina and its mission is allegedly “to ensure every eligible citizen has the opportunity to register to vote, participate in fair and impartial elections, and have the assurance that their votes will count.”

JURISDICTION AND VENUE

9. Plaintiffs reincorporate all prior allegations as if fully set forth herein;
10. All but one Plaintiff (i.e. Plaintiff Reece) resides within the counties encompassed by the Anderson/Greenwood Division of this Court (which covers Abbeville, Anderson, Edgefield, Greenwood, McCormick, Newberry, Oconee, Pickens, and Saluda). Defendants reside in the Columbia Division of this Court.
11. Plaintiffs acknowledge and believe that this case is associated to the case of *Somers v. S.C. Election Commission*, C.A. No.: 3:12-cv-01191-CMC-CHH-JMC, heard by a three judge panel of this Court on May 14, 2012.
12. This matter touches the foundational issues of the right to democratic process in the election of one's legislative representatives.
13. This action is brought pursuant to 42 U.S.C. § 1983 to redress the deprivation, under color of law, of rights secured by the United States Constitution, including the 14th and 15th Amendments and by Section 5 of the Voting Rights Act of 1965, as amended.
14. Venue properly lies before this Court under 28 U.S.C. § 1391(b). All Defendants all reside in this district and the majority of acts or omissions giving rise to Plaintiffs' claims have occurred or will occur in this district.
15. This is an action for temporary, declaratory and permanent injunctive relief to enjoin the enforcement of S.C. Code Ann. §8-13-1356 as interpreted by the South Carolina Supreme Court in *Anderson et al. v. South Carolina Election Commission et al.*, Slip Opinion number 27120, filed May 2, 2012 (S.C. Sup. Ct) and *Florence County Democratic Party et al. v. Florence County Republican Party et. al*, Slip Opinion No. 27128, June 5, 2012 (S.C. Sup. Ct).

FOR A FIRST CAUSE OF ACTION
(Voting Rights Act Violations)

16. Plaintiffs reincorporate all prior allegations as if fully set forth herein;
17. South Carolina is a “covered jurisdiction” pursuant to the Voting Rights Act of 1965, as amended. (42 U.S.C. §1973c).

18. Section 5 of the Voting Rights Act of 1965, as amended, prohibits the enforcement in any “covered jurisdiction” of:

“any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on the date used to determine coverage, until either:

(1) A declaratory judgment is obtained from the U.S. District Court for the District of Columbia that such qualification, prerequisite, standard, practice, or procedure neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group, or

(2) It has been submitted to the Attorney General and the Attorney General has interposed no objection within a 60-day period following submission.”

28 C.F.R. §51.1

19. “Vote and voting” are defined in the Act, to include “all action necessary to make a vote effective in any primary, special, or general election, including, but not limited to, registration, listing pursuant to this Act, or other action required by law prerequisite to voting, casting a ballot, and having such ballot counted properly and included in the appropriate totals of votes cast with respect to candidates for public or party office and propositions for which votes are received in an election.” 28 C.F.R. §51.2.

20. Even “[c]ertain activities of political parties are subject to the preclearance requirement of section 5. A change affecting voting effected by a political party is subject to the preclearance requirement: (a) If the change relates to a public electoral

function of the party and (b) if the party is acting under authority explicitly or implicitly granted by a covered jurisdiction or political subunit subject to the preclearance requirement of section 5.” 28 C.F.R. §51.7.

21. Section 5 of the Act further

“requires that, **prior to enforcement of any change affecting voting**, the jurisdiction that has enacted **or seeks to administer the change must either**:

(a) Obtain a judicial determination from the U.S. District Court for the District of Columbia that the voting change neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group.

(b) make to the Attorney General a proper submission of the change to which no objection is interposed. **It is unlawful to enforce a change affecting voting without obtaining preclearance under section 5. The obligation to obtain such preclearance is not relieved by unlawful enforcement.**” 28 C.F.R. §51.10 (emphasis added)

22. Examples of such changes which require preclearance from the Department of Justice include, “[a]ny change affecting the eligibility of persons to become or remain candidates, to obtain a position on the ballot in primary or general elections, or to become or remain holders of elective offices.” 28 C.F.R. §51.13(g).

23. In a series of rulings by the South Carolina Supreme Court on May 2, 2012, May 3, 2012 and June 5, 2012,¹ the South Carolina Supreme Court altered the before then general interpretation of S.C. Code Ann. §8-13-1356, enacted in 1991 and thereafter amended in 1996, and placed immediately in force a “change affecting the eligibility of persons to become or remain candidates, to obtain a position on the ballot in primary or general elections, or to become or remain holders of elective offices” without the State obtaining preclearance from the U.S. Department of Justice. These actions are in clear

¹ *Anderson et al. v. South Carolina Election Commission et al.*, Slip Opinion number 27120, 2012 S.C. LEXIS 100, filed May 2, 2012 (S.C. Sup. Ct) and *rehearing* 2012 S.C. LEXIS 99 decided May 3, 2012, and *Florence County Democratic Party et al. v. Florence County Republican Party et. al*, Slip Opinion No. 27128, 2012 S.C. LEXIS 116, June 5, 2012 (S.C. Sup. Ct).

violation of the Voting Rights Act of 1965, as amended and as interpreted in 28 C.F.R. §51.13(g).

24. As a result of these actions, at least 215 Democratic and Republican hopefuls across the state have been removed from the ballots for allegedly failing to properly file their SEI simultaneously with their SIC. Fifteen of out 23 challengers in Anderson and Pickens counties who filed to run in March 2012 have now been deemed ineligible. In Oconee County alone, 11 of 13 candidates faced the same fate, prompting election officials to entirely cancel the Republican primary. Plaintiffs have suffered personal harm in that they each have been removed from their party's primary ballot with Plaintiffs like Reece and Smith being removed less than a week before the primary elections were to occur. In all cases, candidates were removed from the ballots within a 45 day period prior to the election when a sizable number of voters had already cast their absentee ballots. Because of the dictates of the South Carolina Supreme Court's decision, Plaintiffs have no other adequate remedy at law other than to turn to this Court and seek enforcement of their federally protected Constitutional and statutory rights. Plaintiffs have standing to enforce the mandates of Section Five of the Voting Rights Act of 1965, as amended. 28 C.F.R. §51.63. (*See also 5 U.S.C. 301; 28 U.S.C. 509, 510, and 42 U.S.C. 1973b, 1973c.*)

25. Accordingly, Plaintiffs seek an Order of this Court staying the immediate and permanent enforcement of *Anderson et al. v. South Carolina Election Commission et al.*, Slip Opinion number 27120, 2012 S.C. LEXIS 100, filed May 2, 2012 (S.C. Sup. Ct) and *rehearing* 2012 S.C. LEXIS 99 decided May 3, 2012 (S.C. Sup. Ct.), and *Florence County Democratic Party et al. v. Florence County Republican Party et. al*, Slip Opinion

No. 27128, 2012 S.C. LEXIS 116, June 5, 2012 (S.C. Sup. Ct) and requiring that either a) Plaintiffs' names (and those similarly situated) be returned to the ballots for the primaries to be held Tuesday, June 12, 2012; or b) that the primaries scheduled for Tuesday, June 12, 2012 be enjoined pending resolution of this matter by this Court.

FOR A SECOND CAUSE OF ACTION
(S.C. CODE ANN. §8-13-1356 IS UNCONSTITUTIONAL AND
VIOLATES EQUAL PROTECTION)

26. Plaintiffs reincorporate all prior allegations as if fully set forth herein;

27. S.C. Code Ann. §8-13-1356 states with regard to the filing of statements of economic interests by candidates for public office:

(A) This section does not apply to a public official who has a current disclosure statement on file with the appropriate supervisory office pursuant to Sections 8-13-1110 or 8-13-1140.

(B) A candidate must file a statement of economic interests for the preceding calendar year at the same time and with the same official with whom the candidate files a declaration of candidacy or petition for nomination.

(C) The official with whom the candidate files a declaration of candidacy or petition for nomination, no later than five business days after candidacy books close, must file a copy of the statement with the appropriate supervisory office.

(D) An individual who becomes a candidate other than by filing must, no later than fifteen business days after becoming a candidate, file a statement of economic interests for the preceding calendar year with the appropriate supervisory office.

(E) An officer authorized to receive declarations of candidacy and petitions for nominations under the provisions of Chapter 11 of Title 7 may not accept a declaration of candidacy or petition for nomination unless the declaration or petition is accompanied by a statement of economic interests. If the candidate's name inadvertently appears on the ballot, the officer authorized to receive declarations of candidacy or petitions for nomination must not certify the candidate subsequent to the election.

(F) If the candidate files for office before January first of the year in which the election is held, he must file a supplementary statement covering the preceding

calendar year no later than April first of the year in which the election is held.

(G) A candidate who is not a public official otherwise filing a statement has the same disclosure requirements as a public official with the exception of reporting gifts.

(H) The State Ethics Commission must furnish to each clerk of court in the State forms on which the statement of economic interests shall be filed.

28. The South Carolina Supreme Court has interpreted S.C. Code Ann. §8-13-1356 to mean that “S.C. Code Ann § 8-13-1356 is satisfied if an individual, when filing a Statement of Intention of Candidacy (SIC), provides the political party with a paper copy of a Statement of Economic Interest (SEI), whether previously electronically filed or not” The Court then clarified to state that their opinion could only be complied with in that exact fashion and no other. *Anderson v. S.C. Election Comm’n*, 2012 S.C. LEXIS 99 *1, decided May 3, 2012 (S.C. Sup. Ct.)

29. As affirmed in *Bush v. Gore*, 531 U.S. 98, 104 (2000), “The right to vote is protected in more than the initial allocation of the franchise. Equal protection applies as well to the manner of its exercise.”

30. South Carolina’s application of this cumbersome and labyrinthine procedure only to non-incumbents has no measurable justification for the burden it imposes – i.e. the fundamental loss of a right to participate in the electoral process via being a candidate for office.

31. Accordingly, S.C. Code Ann. §8-13-1356, as interpreted by the South Carolina Supreme Court, violates the Plaintiffs’ due process guarantee under the Fourteenth Amendment in that it unreasonably imposes an undue burden upon non-incumbents for no measurable justification.

32. Furthermore, as recounted above, S.C. Code Ann. §8-13-1356 as applied by the local political parties and the county election commissions is unconstitutional *as applied* because the manner in which it is being applied is inconsistent throughout the State. Candidates in the same county, but of a different party, remain on the ballot because they are deemed by their party to be “exempt,” while other candidates who have filed REIs, but for a different office have been removed from the ballot (i.e. Plaintiff Reece). Conversely, some Plaintiffs (i.e. Plaintiff Shirley) have been removed from the ballot while their challengers remain on the ballot because the challenger previously filed REI from another public position they hold.

33. Because of the inconsistencies with which S.C. Code Ann. §8-13-1356 is being applied across the state, Plaintiffs seek an Order of this Court staying the immediate and permanent enforcement of *Anderson et al. v. South Carolina Election Commission et al.*, Slip Opinion number 27120, 2012 S.C. LEXIS 100, filed May 2, 2012 (S.C. Sup. Ct) and *rehearing* 2012 S.C. LEXIS 99 decided May 3, 2012 (S.C. Sup. Ct.), and *Florence County Democratic Party et al. v. Florence County Republican Party et. al*, Slip Opinion No. 27128, 2012 S.C. LEXIS 116, June 5, 2012 (S.C. Sup. Ct) and requiring that either a) Plaintiffs’ names (and those similarly situated) be returned to the ballots for the primaries to be held Tuesday, June 12, 2012; or b) that the primaries scheduled for Tuesday, June 12, 2012 be enjoined pending resolution of this matter by this Court.

FOR A THIRD CAUSE OF ACTION
(ATTORNEY’S FEES AND COSTS
PURSUANT TO 42 U.S.C. §1988)

34. Plaintiffs reincorporate all prior allegations as if fully set forth herein;

35. Plaintiffs seek reasonable attorney's fees and litigation costs pursuant to a 42 U.S.C. §1988 as a result of having to file this action to enforce compliance with the Voting Rights Act of 1965, as amended, and their rights to due process under the law as guaranteed by the Fourteenth Amendment and 42 U.S.C. §1983.

WHEREFORE, having fully put forth their complaint, the Plaintiffs pray this Honorable Court award them the following:

- 1) An *ex parte* temporary restraining order requiring that either a) Plaintiffs' names (and those similarly situated) be returned to the ballots for the primaries to be held on Tuesday, June 12, 2012; or b) that the primaries scheduled for Tuesday, June 12, 2012 be enjoined pending resolution of this matter by this Court.
- 2) A stay of the immediate and permanent enforcement of *Anderson et al. v. South Carolina Election Commission et al.*, Slip Opinion number 27120, 2012 S.C. LEXIS 100, filed May 2, 2012 (S.C. Sup. Ct) and *rehearing* 2012 S.C. LEXIS 99 decided May 3, 2012 (S.C. Sup. Ct.), and *Florence County Democratic Party et al. v. Florence County Republican Party et. al*, Slip Opinion No. 27128, 2012 S.C. LEXIS 116, June 5, 2012 (S.C. Sup. Ct);
- 3) Plaintiffs' attorneys' fees and litigation costs pursuant to 42 U.S.C. §1988; and
- 4) Such other and further relief as this Court deems just and proper.

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June 11, 2012

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